Filed 10/24/16 Megawine v. Frank-Lin Distillers Products CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MEGAWINE, INC.,

Plaintiff,

v.

FRANK-LIN DISTILLERS PRODUCTS, LTD., et al.,

Defendants and Respondents;

PHILIP H. STILLMAN,

Objector and Appellant.

B266201
(Los Angeles County Super. Ct. No. BC569114)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael P. Linfield, Judge. Affirmed.

Stillman & Associates, Philip H. Stillman; J.J. Little & Associates and James J. Little for Objector and Appellant.

Mezzetti Law Firm, Inc., Robert L. Mezzetti II and Maureen Pettibone Ryan for Defendants and Respondents.

In the underlying action, Megawine, Inc. (Megawine) filed a complaint for breach of contract and fraud against respondents in Los Angeles County. After granting respondents' motion for a change of venue to Santa Clara County, the trial court issued an award of attorney fees to respondents as sanctions against appellant Philip Stillman, Megawine's legal counsel. We affirm the fee award.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

On January 12, 2015, Megawine filed its original complaint against respondents Frank-Lin Distillers Products, Ltd. (Frank-Lin) and Vince Maestri. The complaint alleged that Megawine is a California corporation with its principal office in Los Angeles County, that Frank-Lin is a California corporation whose facilities are located in San Jose, and that Maestri is an owner of Frank-Lin and its chief executive officer. The complaint asserted claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and intentional and negligent misrepresentation, predicated on an alleged oral agreement that obliged Frank-Lin to transfer its alcoholic beverage distribution business to Megawine. The complaint asserted that Maestri and other officers of Frank-Lin made misrepresentations and false promises that induced

Megawine to enter into the agreement, and that respondents failed to comply with the agreement.

On February 2, 2015, Megawine filed a first amended complaint (FAC) against respondents, which also contained claims for breach of contract, breach of the implied covenant, and intentional and negligent misrepresentation. The FAC, like the original complaint, was signed by attorney Ron Regwan.

On February 3, 2015, respondents filed their motion under Code of Civil Procedure sections 395 and 397 for a change of venue.[1] Relying on the allegations in the original complaint, the motion contended venue was proper only in Santa Clara County, arguing that Frank-Lin's principal office was located in that county, that Maestri resided there, and that the pertinent agreement was "negotiated and consummated" in San Jose, which is located in Santa Clara County. The motion placed special emphasis on Maestri's place of residence as a determinant of venue. Accompanying the motion was a request for an award of attorney fees and expenses that respondents incurred in connection with the motion. That request relied on subdivision (b) of section 396b, which authorizes such an award to the prevailing party on a venue motion against the attorney representing the adverse party.

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[1] All further statutory citations are to the Code of Civil Procedure, unless otherwise indicated.

Megawine's opposition to the motion maintained that venue should be determined by reference to the first amended complaint, which alleged that the pertinent contract was executed in Los Angeles County. Megawine argued that venue was proper in Los Angeles County, where the contract was "entered into" and was to be performed (§ 395, subd. (a)). Megawine's opposition was executed by appellant Stillman, as counsel for Megawine.

Respondents' reply contended, inter alia, that because Megawine's action involved breach of contract and tort claims against a corporate defendant and an individual defendant, venue was controlled by the rules applicable to tort actions, which specified that trial was proper only in Santa Clara County, where the "individual defendant" resided. The reply also requested an award of fees and expenses against Regwan and appellant.

Prior to the hearing on the venue motion, which was set for April 1, 2015, the trial court issued a tentative written ruling granting the venue motion. The tentative ruling concluded that the correct venue for the entire action was Santa Clara County because the misrepresentation claims were not properly tried in Los Angeles County. The tentative ruling further denied respondents' request for a fee award.

On March 30, 2015, appellant, acting on behalf of Megawine, submitted a request for Maestri's dismissal from the action without prejudice. The following day, at the hearing on the venue motion, the trial court requested

supplemental briefing from the parties regarding the extent to which Maestri's dismissal affected the motion.

Megawine's supplemental brief contended the dismissal established that venue was proper in Los Angeles County. In reply, respondents' supplemental brief maintained that under the dismissal statutes, the dismissal was necessarily ineffective while their venue motion was pending (§ 581, subd. (i)). Respondents renewed their request for an award of attorney fees and costs, arguing that the improper dismissal reflected bad faith conduct.

The day before the final hearing on the venue motion, which occurred on April 22, the trial court issued a tentative ruling granting the motion and awarding sanctions against appellant. Following that hearing, the trial court granted the venue motion, concluding that the determinations reflected in its tentative ruling were correct because Maestri's dismissal was ineffective. The court further issued an attorney fee award of $7,700 in respondents' favor against appellant. This appeal followed.

DISCUSSION

Appellant contends the trial court erred in issuing the award, arguing that the ruling on the venue motion was incorrect, that he was denied due process regarding the award, and that the trial court failed to apportion the fees and costs incurred by respondents between Megawine's prior

counsel and himself. As explained below, we reject his contentions.[2]

A. *Governing Principles*

We begin by setting forth the pertinent circumstances under which the trial court may properly order a change of venue and issue a related award of attorney fees and costs.

1. *Venue*

Section 396b authorizes the trial court to order the transfer of an action to another court when the action is

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[2] Notwithstanding the characterization of Megawine as an appellant in the opening and reply briefs, Megawine is not an appellant, and may not challenge the ruling on the venue motion in this appeal. The notice of appeal was filed by appellant Philip H. Stillman, and targets only the fee award. Furthermore, although the fee award is independently appealable as an order directing the payment of sanctions exceeding $5,000 by an attorney (§ 904.1, subd. (a)(12)), the ruling on the venue motion itself is nonappealable (*Calhoun v. Vallejo City Unified School Dist.* (1993) 20 Cal.App.4th 39, 41). However, we may examine the latter ruling to the extent necessary to resolve appellant Stillman's challenges to the fee award. (§ 906; see *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1331-1332 [discovery ruling preceding order from which appeal was noticed was properly before appellate court because that ruling necessarily affected order].)

commenced in the incorrect venue. (*Cholakian & Associates v. Superior Court* (2015) 236 Cal.App.4th 361, 368 (*Cholakian & Associates*.) "Venue, the county in which an action takes place, is statutorily governed by the type or form of the particular action." (*Lebastchi v. Superior Court* (1995) 33 Cal.App.4th 1465, 1469 (*Lebastchi*).) For purposes of determining venue, the principal classification is of "local" and "transitory" actions. (3 Witkin, Cal. Procedure (5th ed. 2008) Actions, §§ 787-788, pp. 1024-1025.) If the main relief sought in the action relates to rights in real property, the action is local; otherwise, it is transitory. (*Lebastchi, supra,* 33 Cal.App.4th at p. 1469.) Generally, the complaint determines the nature of the action. (*Pacific Air Lines, Inc. v. Superior Court* (1965) 231 Cal.App.2d 587, 590.)

Here, the original complaint and FAC establish that the action is transitory, as they assert breach of contract and misrepresentation claims relating to the right to distribute certain brands of alcoholic beverages throughout California. Each complaint alleges that Megawine entered into an agreement with Frank-Lin obliging Frank-Lin to discontinue the distribution of certain brands of alcoholic beverages, and permitting Megawine to take over their distribution. According to the complaints, respondents "never intended to do as they promised," and did not, in fact, comply with the agreement. The complaints assert that respondents breached the agreement and intentionally made false promises, or alternatively, negligently promised to perform acts they could not carry out. Each complaint seeks

damages for breach of the contract (including the implied covenant), and compensatory damages for misrepresentation.

We therefore examine the venue principles applicable to transitory actions. "It is well established that a defendant is entitled to have an action tried in the county of his or her residence unless the action falls within some exception to the general venue rule." (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 483 (*Brown*).) That general rule is set forth in the opening portion of section 395, subdivision (a), which states: "Except as otherwise provided by law . . . , the superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action." (*Brown*, *supra*, 37 Cal.3d at p. 483.) In view of the general rule "favor[ing] the right of trial at the defendant's residence, a plaintiff who lays venue elsewhere" in a transitory action must show that it is "triable outside the county of the defendant's residence." (*Lebastchi*, *supra*, 33 Cal.App.4th at p. 1469.) The remaining portions of section 395, subdivision (a) sets forth exceptions for particular actions, including those for breach of contract.

Here, Megawine's claims, as asserted in the complaints, are subject to different venue provisions. To begin, Frank-Lin, although a resident of Santa Clara County, is subject to a special venue rule as a corporation. Section 395.5 states: "'A corporation . . . may be sued in the county where the contract is made or is to be performed, or

where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated . . . .'" That provision encompasses transitory claims sounding in contract and tort. (*Mission Imports, Inc. v. Superior Court* (1982) 31 Cal.3d 921, 927-928. (*Mission Imports*).)

Furthermore, the claims against Maestri are governed by different venue rules. Because no special venue law is applicable to the misrepresentation claims, they fall within the rule stated in the opening portion of section 395, subdivision (a), that is, are properly tried in the county of an individual defendant's residence. (*Kaluzok v. Brisson* (1946) 27 Cal.2d 760, 764; *Stokes v. Newsom* (1948) 89 Cal.App.2d 147, 149-150 (*Stokes*).) In contrast, the breach of contract claims are governed by a rule set forth in another portion of section 395, subdivision (a) (*Lebastchi*, *supra*, 33 Cal.App.4th at pp. 1469-1470). That portion of the statute provides that absent qualifications not relevant here, "if a defendant has contracted to perform an obligation in a particular county, the superior court in the county where the obligation is to be performed, where the contract in fact was entered into, or where the defendant or any defendant resides at the commencement of the action is a proper court for the trial of an action founded on that obligation, and the county where the obligation is incurred is the county where it is to be performed, unless there is a special contract in writing to the contrary." (§ 395, subd. (a).)

Because Megawine's action targets defendants subject to different venue principles and also involves claims subject to different principles, the determination of venue falls under the rules applicable to a "'mixed action.'" (*Brown*, *supra*, 37 Cal.3d at p. 487.) As our Supreme Court explained in *Brown*, "[i]n a mixed action, a plaintiff alleges two or more causes of action each of which is governed by a different venue statute. Or, two or more defendants are named who are subject to different venue standards. [Citation.] 'The identifying characteristic of mixed actions is that two or more inconsistent venue provisions . . . appear to be concurrently applicable in the same case.' [Citation.] [¶] In cases with mixed causes of action, a motion for change of venue must be granted on the entire complaint if the defendant is entitled to a change of venue on any one cause of action. [Citations.]" (*Ibid.,* quoting 6 Grossman & Van Alstyne, Cal. Practice (2d ed. 1981) Venue, § 365, p. 389.) Furthermore, "it is well recognized that when a plaintiff brings an action against several defendants, both individual and corporate, in a county in which none of the defendants reside, an individual defendant has the right to change venue to the county of his or her residence. This is true even though the action was originally brought in a county where the corporate defendants may be sued under . . . section 395.5." (*Brown*, *supra*, 37 Cal.3d at p. 482, fn 6.)

Ordinarily, "'[v]enue is determined based on the complaint on file at the time the motion to change venue is made. [Citations.]' [Citation.] [¶] A defendant may

challenge the venue by affidavits dealing with the type or nature of the action, and the plaintiff may bolster his or her choice of venue with counteraffidavits consistent with the complaint's theory of the type of action but amplifying the allegations relied upon for venue. [Citation.]" (*Lebastchi*, *supra,* 33 Cal.App.4th at pp. 1469, quoting *Brown*, *supra*, 37 Cal.3d at p. 482.) The weight properly attributable to the complaint's allegations hinges on whether the complaint is verified or unverified. (*Quick v. Corsaro* (1960) 180 Cal.App.2d 831, 835 (*Quick*).) The trial court's ruling on a venue motion is reviewed for an abuse of discretion. (*Cholakian & Associates*, *supra*, 236 Cal.App.4th at p. 368.)

Because Megawine's complaints are unverified, their allegations relating to the determination of venue are not dispositive, absent special circumstances.[3] (*Quick*, *supra*, 180 Cal.App.2d at p. 835.) "[W]here the defendant's affidavit adequately controverts the allegations in [the] plaintiff's unverified complaint which would give the county in which it was filed jurisdiction to try the action, and alleges facts which would make the action triable in another county, the court must, in the absence of a sufficient counteraffidavit, grant the motion, and has no authority to treat the unverified complaint as a counteraffidavit.

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[3] The complaints are signed by attorney Ron Regwan, but lack any form of verification. (4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, §§ 459-465, pp. 590-596.)

However, where the defendant's affidavit does not deny or otherwise meet *these* essential allegations in the complaint as they relate to venue, it is insufficient upon which to grant a motion for a change, and the complaint will determine jurisdiction, even though unverified." (*Id.* at pp. 835-836.) Thus, "[e]ven though an unverified complaint may have some effect in supporting the chosen venue where the defendant's affidavit does not deny or otherwise meet the allegations in the complaint as they relate to venue [citation], where . . . [the] defendant's declaration shows entitlement to transfer, an unverified complaint is not the equivalent of a counter affidavit . . . ." (*Central Bank v. Superior Court* (1978) 81 Cal.App.3d 592, 601.)

2. *Award of Attorney Fees and Expenses*

In connection with a venue motion, subdivision (b) of section 396b authorizes the trial court to issue an award of sanctions to the prevailing party against the attorney representing the adverse party. That statute provides: "In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her costs of action. In determining whether that order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith

given the facts and law the party making the motion or selecting the venue knew or should have known. As between the party and his or her attorney, those expenses and fees shall be the personal liability of the attorney not chargeable to the party. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after opportunity to be heard." (§ 396b, subd. (b).)

In evaluating the propriety of an award, the court must assess whether the attorney representing the adverse party acted in good faith and with a reasonable belief in the correctness of the adverse party's position regarding venue. (*Metzger v. Silverman* (1976) 62 Cal.App.3d Supp. 30, Supp. 38- Supp. 39 (*Metzger*).) "The statute requires the court to assess whether the attorney acted in good faith after having first skillfully evaluated the facts and reviewed applicable statutes and case law. The phrase 'good faith' is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation. [Citation.] Thus, if, after reviewing the factual and legal presentation made by the losing party, the court finds that no reasonable attorney would have honestly chosen such a forum, and that the forum appears to have been selected to impair [the] defendant's right to defend, an award of attorney fees would be entirely proper. [Citation.]" (*Id*. at Supp. 38.)

Because the propriety of an award and its amount is consigned to the trial court's discretion, "its decision will be reversed only if there has been a prejudicial abuse of discretion." (*Mission Imports*, *supra*, 31 Cal.3d at p. 932.)

B. *Underlying Proceedings*

The original complaint, filed January 12, 2015, alleged that in August 2012, Boris Shats and Michael Costlow of Megawine met with Maestri in San Jose to discuss a possible transfer of Frank-Lin's distribution business to Megawine. The complaint further alleged that "[t]he parties agreed that Frank-Lin would discontinue the distribution of all the brands it had been distributing by September 30, 2012, . . . and that Megawine would take over October 1st, 2012."

On February 2, 2015, Megawine filed the FAC, which is materially similar to the original complaint, with the exception of new allegations asserting the existence of intervening events between the August 2012 San Jose meeting and the acceptance of the pertinent agreement. Regarding those events, the FAC alleges: "After that initial pitch meeting in San Jose, there were numerous follow up telephone calls and emails were sent back and forth, and there were follow[ ]up in[-]person meetings in Southern California, at Frank[-]Lin's Ontario office, at the home of Frank-Lin's [vice-president] in Hemet, and telephone calls from the Megawine office in Los Angeles." The FAC further alleged that "the final conversations in which Megawine

finally accepted [respondents'] offer" occurred in Los Angeles County.

Respondents' motion for a change of venue, filed February 3, 2015, targeted the original complaint. In asserting that venue was proper only in Santa Clara County, the motion relied on the original complaint's allegations, including those relating to the negotiation and acceptance of the agreement. Supporting the motion was a declaration from Maestri, who stated that he resided in Santa Clara County, that Frank-Lin maintained an office there from which Maestri operated its business, and that the agreement was made in a club located in that county.

Accompanying the motion's request for sanctions was a declaration from attorney Julie Bonnel-Rogers, who stated that she made an unsuccessful attempt to secure a stipulation for a change of venue from attorney Ron Regwan, who had filed the original complaint. According to Bonnel-Rogers, on January 16, 2015, she began an e-mail exchange with Regwan, requesting that he voluntarily stipulate to a change of venue because the agreement had been made in Santa Clara County. Shortly afterward, Regwan responded that he had confirmed the existence of numerous relevant meetings in Southern California after the initial meeting in San Jose.

On March 19, 2015, appellant submitted an opposition to the venue motion on behalf of Megawine. The opposition contended that notwithstanding Megawine's misrepresentation claims against respondents, venue was

proper in Los Angeles County because the pertinent contract was entered into there, and was to be performed there. In support of that contention, the opposition relied on the allegations in the FAC -- which the opposition identified as the applicable complaint -- and a declaration from Boris Shats, Megawine's president, who stated that after lengthy discussions with respondents following the initial San Jose meeting, he decided to accept the "deal" while in Los Angeles, and that "[t]h[e] acceptance was communicated by [his] office in Los Angeles from Los Angeles County." The opposition contained no discussion regarding respondents' request for sanctions, but requested a fee award on behalf of Megawine.

Respondents' reply, filed March 25, 2015, asserted that Megawine was "venue hunting to buy time and unfair advantage." Respondents contended their venue motion properly targeted the original complaint, arguing that the FAC was never served on them, and was filed without a proof of service. Pointing to the original complaint's allegations and Maestri's declaration, respondents maintained that the contract was executed at the San Jose meeting. Respondents further argued that because Megawine's action was against an individual defendant and a corporate defendant and involved "mixed" claims, the propriety of venue in Santa Clara County was established by the residence of the "individual defendant."

The reply also requested an award of sanctions against Regwan and appellant. Supporting the request was a

declaration from Bonnel-Rogers, who stated that she had engaged in "a meet and confer" exchange with appellant regarding venue. According to the attached copy of her e-mail correspondence with Regwan and appellant, on February 10, 2015, she sought a stipulation for a change of venue from Regwan, asserting (with citations to *Brown* and other case authority) that the "individual defendant" was entitled to trial in the county of his residence because the action was "mixed," that is, involved breach of contract and tort claims. When Regwan informed Bonnel-Rogers that appellant had substituted in as Megawine's counsel, she forwarded her request for a stipulation to appellant. On February 12, 2015, appellant sent an e-mail to Bonnel-Rogers, stating: ". . . I am the new kid on the block. However, I have reviewed the [FAC], and while I certainly understand and appreciate your venue arguments, I think there is just a strong argument if not stronger one that supports venue in Los Angeles County." On February 23, 2015, Bonnel-Rogers drew appellant's attention to the apparent irregularities surrounding the filing of the FAC, re-stated her grounds for seeking a stipulation for a change of venue (with citations to *Brown* and other case authority), and asserted that appellant was vulnerable to sanctions for failure to so stipulate.

In late March 2015, prior to the hearing on the venue motion, the trial court issued its tentative ruling on the motion, which evaluated venue in light of the FAC's allegations. After discussing the conflicting showings

regarding where the contract was made, the court stated that the resolution of that issue could not determine venue because Megawine had asserted a mixed action. The court further concluded that trial on the fraud claims was not proper in Los Angeles County. The court thus tentatively granted the venue motion, stating that "'[i]n cases with mixed causes of action, a motion for change of venue must be granted on the entire complaint if the defendant is entitled to a change of venue on any one cause of action" (quoting *Brown*, *supra*, 37 Cal.3d at p. 488). The court nonetheless tentatively declined to award sanctions, concluding that the choice of venue was made in good faith on the basis of the facts then reasonably known.

On March 30, 2015, on behalf of Megawine, appellant submitted a request to the court clerk for Maestri's dismissal from the action without prejudice. Subdivision (b)(1) of section 581 states that an action may be dismissed "[w]ith or without prejudice, upon written request of the plaintiff to the clerk, filed with papers in the case . . . ." Subdivision (i) of section 581 further provides: "No dismissal of an action may be made or entered, or both, under paragraph (1) of subdivision (b) . . . if there is a motion pending for an order transferring the action to another court under the provisions of [s]ection 396b."

The following day, April 1, 2015, at the hearing on the venue motion, appellant did not appear on behalf of Megawine, which was represented by a different attorney. Respondents' counsel also was not present. The trial court

requested supplemental briefing regarding the implications of Maestri's dismissal for the motion, and continued the hearing to April 22, 2015.

On April 6, 2015, appellant submitted a supplemental opposition on Megawine's behalf, arguing that Maestri's dismissal "simplifie[d] the venue analysis . . . based on the [FAC]." The opposition contended that under section 395.5, the proper venue for the breach of contract and tort claims against Frank-Lin was Los Angeles County. The opposition contained no discussion or response to respondents' request for sanctions.

Respondents' supplemental reply, filed April 13, 2015, contended that Maestri's dismissal had no implications for the trial court's venue determinations, as stated in the tentative ruling, because the dismissal was ineffective under section 581, subdivision (i). Respondents asked the court to re-consider its tentative ruling regarding their request for sanctions, arguing, inter alia, that appellant never arranged for service of the FAC, unreasonably declined to stipulate to a change of venue, and filed the defective dismissal.

On April 22, 2015, at the hearing on the venue motion, no attorney appeared on behalf of Megawine. Following the hearing, on June 10, 2015, the trial court issued a final order granting the venue motion and awarding sanctions against appellant. The order incorporated the rationale contained in the tentative ruling regarding the determination of venue. The final order also concluded that Maestri's dismissal was improper under section 581,

subdivision (i), and directed his reinstatement as a defendant.[4]

The order further stated: "The only difference between the court's original tentative and its ruling today concerns the imposition of sanctions. . . . [T]he court now believes that sanctions are appropriate. [¶] . . . [¶] It appears clear to the court that defendant[s] attempted to meet-and-confer to resolve this issue without the need for a formal motion to change venue, and that plaintiff rebuffed these efforts. Further, it appears to the court that plaintiff's dismissal of the individual defendant was made in bad faith. . . . At the time that plaintiff dismissed the individual defendant, plaintiff was already aware that the court had tentatively decided to grant defendant's motion to change venue. The court also notes that the dismissal of the defendant was made without prejudice. This dismissal without prejudice appears to have been made in bad faith as an attempt to prevent the change of venue." Noting that respondents had requested sanctions totaling $15,035, the court awarded $7,700 in attorney fees as sanctions against appellant.

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[4] We observe that appellant's briefs do not challenge the ruling regarding Maestri's dismissal, stating that appellant "acknowledges that [it] . . . was precluded by [section] 581[, subdivision] (i)." We therefore do not examine that aspect of the final order.

C. *Venue Determination*

Appellant contends the trial court erred in ruling that venue was proper only in Santa Clara County. He argues that because the FAC was the operative complaint when the venue motion was filed, the trial court was obliged to take the motion off calendar or deem it moot because the venue motion targeted the original complaint. In the alternative, he argues that the allegations in the FAC establish that venue was proper in Los Angeles County.

We conclude that the contention predicated on the FAC as the operative complaint has been forfeited for want of a proper objection. Generally, "[a]n appellate court will not consider procedural defects or erroneous rulings where an objection could have been, but was not, raised in the court below." (*Steven W. v. Matthew S.* (1995) 33 Cal.App.4th 1108, 1117.) Furthermore, under the doctrine of the theory of trial, "'[w]here the parties try the case on the assumption that a cause of action is stated, that certain issues are raised by the pleadings, that a particular issue is controlling, or that other steps affecting the course of the trial are correct, neither party can change this theory for purposes of review on appeal.'" (*State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1130 (*State Comp. Ins. Fund*), quoting 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 407, p. 466.) Closely related is the doctrine of invited error, which "prevents a party from asserting an alleged error as grounds for reversal when the party through its own conduct induced the commission of

the error." (*County of Los Angeles v. Southern Cal. Edison Co.* (2003) 112 Cal.App.4th 1108, 1118.)

The record discloses (1) that at appellant's request, the trial court assessed venue in light of the FAC, and (2) that appellant never otherwise objected to the motion as moot or asked that it be taken off calendar. Megawine's initial opposition asserted that the venue motion was based on the "wrong complaint," requested judicial notice of the FAC, and argued on the basis of the FAC that venue was proper in Los Angeles County. Similarly, Megawine's supplemental opposition maintained that the "venue analysis" should be based on the FAC. In ruling on the venue motion, the trial court effectively granted Megawine's request that it evaluate venue in light of the FAC, as the court's ruling noted the filing of the FAC, and expressly predicated its rationale on the FAC's allegations. Because the court afforded Megawine the relief appellant requested regarding the purported defect in the venue motion, appellant may not assert on appeal that the court was obliged to take alternative action, that is, deny the motion as moot or take it off calendar.[5]

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[5] We observe that the defect in respondents' motion was harmless because the allegations crucial to the determination of venue are found in both complaints. Generally, although "the filing of an amended complaint moots a motion directed to a prior complaint," the trial court may in suitable circumstances permit "'renewal of the earlier motion if appropriately framed.'" (*State Comp. Ins.*

(Fn. continued on next page.)

We further conclude that the trial court correctly determined that under the allegations in the FAC, venue was proper only in Santa Clara County. As explained above (see pt. B. of the Discussion, *ante*), the FAC asserts a "mixed" action, as it asserts breach of contract and misrepresentation claims against a corporate defendant and an individual defendant. Because Frank-Lin, as a corporate defendant, is subject to trial on such claims in several possible locations (§ 395.5), the focus of a venue determination is necessarily on Maestri, who as an individual defendant "has the right to change venue to the county of his . . . residence" notwithstanding the presence of a corporate co-defendant, provided that the venue rules applicable to him entitle him to trial in the county of his residence with respect at least one claim. (*Brown*, *supra*, 37 Cal.3d at pp. 482, 488.) That entitlement potentially attaches to the misrepresentation claims, which fall under the general rule providing for venue in the county of an individual defendant's residence (§ 395, subd. (a)).

Fund, *supra*, 184 Cal.App.4th at pp. 1124, 1131, italics omitted, quoting *Hejmadi v. AMFAC, Inc.* (1988) 202 Cal.App.3d 525, 536.) As explained below, the key allegations regarding the issue of venue are the misrepresentation claims against Maestri, which appear in both complaints. Because the parties had an adequate opportunity to discuss the relevance of those allegations, the court's treatment of the venue motion as a renewed motion directed at the FAC cannot be regarded as prejudicial.

The remaining issue is whether Maestri adequately established his entitlement to trial on the misrepresentation claims in Santa Clara County. The FAC does not control that determination for two reasons: first, it is unverified, and second, it lacks any specific allegations regarding the location of Maestri's residence. In seeking a change of venue, respondents submitted a declaration from Maestri, who stated that he resided in Santa Clara County. Megawine submitted no evidence challenging the location of Maestri's residence. As the record unequivocally shows that Maestri resided in Santa Clara County, the trial court properly concluded that the proper venue for the entire action was that county, even though Frank-Lin was potentially subject to trial in other venues. (*Gallin v. Superior Court* (1991) 230 Cal.App.3d 541, 543-546 [in class action asserting claims for breach of contract, fraud, and deceptive consumer practices against individual and corporate defendants, individual defendant was entitled to change of venue to his county of residence]; see *Stokes, supra,* 89 Cal.App.2d at pp. 147-150 [in action asserting claims for breach of contract and promissory fraud against two defendants, trial court did not abuse its discretion in denying one defendant's motion for change of venue, as the other defendant was entitled to trial on the fraud claim in original venue, where he resided].)

Before the trial court and on appeal, appellant has contended that in a mixed action, the venue rules for contract claims against individuals and corporations take

precedence over the general venue rule applicable to fraud claims against individuals, relying on *Brown*, *supra*, 37 Cal.3d 477. That contention reflects a misreading of *Brown*. There, discharged employees initiated an action against individuals and corporations alleged to be their employers, asserting claims for intentional infliction of emotional distress, wrongful discharge, and discrimination under the California Fair Employment and Housing Act (FEHA; Gov. Code, § 12900 et seq.). (*Brown, supra,* at pp. 480-481.) The employees commenced their action in the county in which the alleged misconduct occurred. (*Ibid.*) The trial court granted the employers' motion under section 395 for a change of venue to a county where several of the individual defendants resided, notwithstanding a special FEHA venue statute providing that such "an action may be brought in any county . . . in which the unlawful practice is alleged to have been committed" (Gov. Code, § 12965, subd. (b)).

In determining that the venue motion was improperly granted, our Supreme Court held that the FEHA venue statute was applicable in cases involving FEHA and non-FEHA claims based on the same facts, concluding that the Legislature's intent in enacting the FEHA venue statute was to facilitate actions by the victims of discrimination. (*Brown*, *supra*, 37 Cal.3d at p. 487.) The court determined that the FEHA venue statute controlled over the "mixed action rule" applicable to section 395, stating that "[a]lthough the mixed action rule recognizes a preference for trial in the county of a defendant's residence, that

preference is outweighed by the strong countervailing policy of the FEHA which favors a plaintiff's choice of venue." (*Brown*, *supra*, 37 Cal.3d at p. 488.)

Here, no special venue statute or public policy displaces the mixed action rule. As explained above section 395 provides the applicable venue rules, which dictate that Santa Clara County is the correct venue for Megawine's action. Accordingly, appellant's contention predicated on *Brown* fails.[6]

For the first time on appeal, appellant contends the FAC's allegation that Maestri is Frank-Lin's alter ego subjects Maestri to the venue rules applicable to corporate defendants.[7] The FAC, like the original complaint, contains

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[6] Before the trial court and on appeal, appellant has also placed special emphasis on *Mission Imports*, *supra*, 31 Cal.3d 921. There, two corporations whose principal places of business were located in different counties filed actions against each other in different venues. (*Id*. at pp. 924-927.) Our Supreme Court concluded that under section 395.5, the corporate defendant in one of the actions, which involved transitory breach of contract and tort claims, was not entitled to a change of venue. (*Mission Imports*, *supra*, at pp. 927-931.) As *Mission Imports* involved no individual defendant, its discussion of venue principles in mixed cases is not pertinent here.

[7] Because the alter ego theory of venue was never raised before the trial court, it is cognizable on appeal only if the undisputed facts in the record establish it as a matter of law. (*In re Marriage of Moschetta* (1994) 25 Cal.App.4th

(Fn. continued on next page.)

an allegation that "at all times relevant herein, each defendant was completely dominated and controlled by its co-defendant and each was the alter ego of the other." The central premise of appellant's contention is that "[w]hen an individual defendant is named [in] a complaint as an alter ego liable for corporate misconduct, the venue statutes applicable to corporations control." That broad premise is false, however, insofar as it asserts that the venue rules applicable to corporations necessarily determine venue with respect to misrepresentation claims against a corporation and an individual alleged to be its alter ego.[8] As explained below, the corporate venue rules are not dispositive here because the FAC's misrepresentation claims against Maestri allege misconduct for which he is responsible as an

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1218, 1227.) For the reasons discussed below, the contention fails on those facts.

[8] "Under the alter ego doctrine, . . . when the corporate form is used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation's acts to be those of the persons . . . actually controlling the corporation, in most instances the equitable owners. [Citations.] The alter ego doctrine prevents individuals . . . from misusing the corporate laws by the device of a sham corporate entity formed for the purpose of committing fraud or other misdeeds. [Citation.]" (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.)

individual, independent of his potential status as Frank-Lin's alter ego.

Generally, absent application of the alter ego doctrine, officers and shareholders of a corporation are liable for the corporation's tortious conduct only when they participate in the conduct. (*Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 503-505; *PMC, Inc. v. Kadisha* (2000) 78 Cal.App.4th 1368, 1380.) That liability attaches to officers and shareholders personally by virtue of their own tortious conduct. (*PMC*, *supra*, 78 Cal.App.4th at p. 1380; *Frances T.*, *supra*, 42 Cal.3d at pp. 503-505.) In the case of officers, the rule described above arises from their status as corporate agents. (*Frances T., supra,* at p. 505.) It is well established that the type of liability imposed on officers and shareholders through their personal conduct is distinct from that imposed under the alter ego doctrine. (*Frances. T.*, *supra,* 42 Cal.3d at p. 504; *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, 785; *Filet Menu, Inc. v. C.C.L. & G., Inc.* (2000) 79 Cal.App.4th 852, 866.)

In addition to alleging that Maestri is Franklin's alter ego, the FAC asserts that Maestri, as an owner of Frank-Lin and its chief executive officer, personally participated in the tortious conduct attributed to Frank-Lin. According to the FAC, in August 2010, Maestri and two other Frank-Lin officers -- Vice-President Mark Pechusik and Chief Financial Officer Tony Demaria -- met with Boris Shats and Michael Costlow of Megawine in a private club in San Jose, where they discussed the transfer of Frank-Lin's distribution

business to Megawine. After that meeting, negotiations continued in other locations. During these discussions, "[t]he Frank-Lin Trio, acting on behalf of . . . Frank-lin[,]" explained that the proposed transfer would render Megawine one of the largest distributors of alcoholic beverages in California. Furthermore, Maestri personally told Shats and Costlow that he would have his "team" urge Frank-Lin's suppliers to shift to Megawine. Later, after Megawine and Frank-Lin entered into an oral agreement regarding the transfer of the distribution business, Costlow learned that Frank-Lin was continuing to distribute wines. Costlow contacted Maestri, who reaffirmed that Frank-Lin would not compete against Megawine. The FAC further alleges that "from the very first meeting [respondents] never intended to do as they promised," and engaged in the distribution of alcoholic beverages after the agreement.

In view of these allegations, the FAC's misrepresentation claims allege misconduct by Maestri for which he is personally liable. That liability is distinct from any liability potentially imposed under the alter ego doctrine, which would render Maestri responsible for the misconduct charged against Frank-Lin, his co-defendant. As explained in *Hennessey's Tavern, Inc. v. American Air Filter Co.* (1988) 204 Cal.App.3d 1351, "[a]n alter ego defendant has no separate primary liability to the plaintiff. Rather, [the] plaintiff's claim against the alter ego defendant is identical with that claimed by [the] plaintiff against the already-named defendant. [¶] A claim against a defendant,

based on the alter ego theory, is not itself a claim for substantive relief, e.g., breach of contract or to set aside a fraudulent conveyance, but rather, procedural, i.e., to disregard the corporate entity as a distinct defendant . . . . [Citations.]" (*Id.* at pp. 1358-1359.)

Because the FAC's misrepresentation claims are based -- at least in part -- on Maestri's personal conduct, the alter ego allegation does not trigger a venue determination under the rules applicable to corporations. As explained above, to the extent those misrepresentation claims rely on Maestri's personal conduct, they are directed at him as an individual. For that reason, the misrepresentation claims set forth in the FAC would necessarily entitle Maestri to trial on the entire action in the county of his residence if the FAC had lacked the alter ego allegation. Furthermore, the supplementation of the FAC with a "procedural" alter ego claim rendering Maestri potentially liable for Frank-Lin's misconduct -- in addition to his personal misconduct -- does not destroy that entitlement, as "[i]n cases with mixed causes of action, a motion for change of venue must be granted on the entire complaint if the defendant is entitled to a change of venue on any *one* cause of action." (*Brown*, *supra*, 37 Cal.3d at p. 488, italics added.)

Lebastchi, 33 Cal.App.4th 1465, upon which appellant relies, is distinguishable. There, the plaintiff asserted a claim for breach of a commercial real property lease against a corporation and the corporate officer who executed the lease. (*Lebastchi, supra,* at pp. 1467-1468.) The plaintiff

sought to hold the corporation and the officer liable for the same breach and damages, alleging that the corporation was the party to the lease and that the officer was the corporation's alter ego. (*Id*. at p. 1470.) In affirming the trial court's denial of the officer's motion for a change of venue, the appellate court concluded that the venue rules applicable to corporations determined venue because "[t]he effect of the alter ego allegations placed [the officer] in the same position as [the corporation], responsible under the contract." (*Id*. at p. 1470.)

Unlike the case before us, the sole theory of liability applicable to the individual defendant in *Lebastchi* arose from the alter ego doctrine. Corporate officers are not personally liable for a breach of a contract they execute on behalf of their corporation, absent special circumstances not presented in *Lebastchi*. (*Oppenheimer v. General Cable Corp.* (1956) 143 Cal.App.2d 293, 296.) The plaintiff in that case thus sought to hold the corporate officer liable for the breach of contract exclusively on an alter ego theory. In contrast, as explained above, the FAC asserts misrepresentation claims directed at Maestri as an individual, not dependent on an alter ego theory. In view of those claims, venue is not properly determined by reference to the rules applicable to corporate defendants. In sum, the trial court did not err in ruling that venue was proper only in Santa Clara County.

D. *Adequate Notice and Opportunity to Be Heard Regarding Sanctions*

Appellant contends he was denied proper notice of the sanctions award against him, as guaranteed under due process principles and section 396b, subdivision (b), which states that "[s]anctions shall not be imposed . . . except on notice contained in a party's papers, or on the court's own noticed motion, and after opportunity to be heard." He argues that because the trial court's initial tentative ruling denied respondents' request for sanctions against him, he lacked proper notice of impending sanctions and an opportunity to be heard before the court decided to issue the award. As explained below, appellant has forfeited his contention.

In *Jansen Associates, Inc. v. Codercard, Inc.* (1990) 218 Cal.App.3d 1166, 1168, the trial court ordered the parties and their attorneys to attend mandatory arbitration proceedings. After the defendant and its attorney failed to do so, the plaintiff sought sanctions against the defendant under section 128.5, which provides for an award of attorney fees and expenses against a party, its attorney, or both, for "'bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay . . . .'" (*Jansen, supra,* 218 Cal.App.3d at p. 1168.) At the sanctions hearing, defense counsel was present. (*Ibid.*) When the trial court ordered an award of sanctions against him at the hearing, he raised no contention predicated on lack of notice, and never sought reconsideration of the award before the trial

court. (*Id*. at pp. 1168-1169.) On appeal, defense counsel contended he was denied proper notice of a possible award against him. (*Id*. at pp. 1169-1170.) The appellate court concluded that he had forfeited that contention "[i]n failing to raise the issue of inadequate notice during the hearing, failing to request a further hearing on the matter, and failing to file a motion to reconsider the issue . . . ." (*Id*. at p. 1170.)

We reach the same conclusion here. Throughout the proceedings before the trial court, appellant never challenged the propriety of sanctions against him upon a ruling in favor of respondents on their venue motion, even though appellant received repeated notice that respondents sought such sanctions. Prior to the initial tentative ruling, appellant received informal notice of respondents' request for sanctions against him through his e-mail exchanges with respondents' counsel, and formal notice of that request in respondents' reply in support of the venue motion. Appellant filed no response to that request, and did not personally appear at the hearing at which the trial court discussed its initial tentative ruling and ordered supplemental briefing. Appellant received formal notice of respondents' renewed request for sanctions against him in respondents' supplemental reply, but filed no response. Although the trial court issued a second tentative ruling granting the request the day before the final hearing on the venue motion, appellant failed to appear at the hearing and

never sought reconsideration of the award. He has thus failed to preserve his contention on appeal.

We further observe that we would reject appellant's contention were we to examine it. The crux of his contention is that in view of the trial court's initial tentative ruling and limited request for supplemental briefing, he reasonably believed that the court would not reconsider its tentative denial of respondents' sanctions request. However, the limited record discloses no reasonable basis for appellant's failure to contest respondents' renewed sanctions request attributable to lack of proper notice.[9]

Because a trial court's tentative ruling on a motion is not binding on the court, it may ordinarily enter a different ruling as the final order without providing an explanation for the change. (*Jespersen v. Zubiate-Beauchamp* (2003) 114 Cal.App.4th 624, 633-634.) That is because a tentative ruling merely "'indicates the way the judge is prepared to decide based on the information before him or her when the ruling was prepared.'" (*Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1245, quoting Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2009) § 9:111 (rev. # 1 2007).)

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[9] To the extent appellant relies on facts not disclosed by the record to explain why no attorney appeared on Megawine's behalf at the final venue motion hearing, those facts are not cognizable on appeal. (*Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625.)

Here, the trial court issued its initial tentative ruling before appellant's attempt to dismiss Maestri and the submission of respondents' supplemental reply brief, which demonstrated that the dismissal was necessarily ineffective while the venue motion was pending. Thereafter, the court issued a second tentative ruling, indicating its intention to grant respondents' request for sanctions. On this record, appellant has no basis to assert he was denied proper notice of impending sanctions and an opportunity to be heard.

E. *Award*

Appellant challenges the award of sanctions on several grounds, arguing that subdivision (b) of section 396b does not support an award against him, and that the trial court made insufficient findings in connection with the award. For the reasons discussed below, we reject his contentions.

As noted above (see pt. A.2. of the Discussion, *ante*), under subdivision (b) of section 396b, the trial court may issue an award to "the prevailing party" on a venue motion upon consideration of "(1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether [the] . . . selection of venue was made in good faith given the facts and law the party . . . selecting the venue knew or should have known." When the party seeking a change of venue prevails, the focus of the trial court's inquiry is on the conduct of the attorney representing the adverse party. (*Metzger*, *supra*, 62 Cal.App.3d at Supp. 38.)

Here, the trial court concluded that sanctions were warranted because appellant rejected a request to stipulate to a change of venue and manifested bad faith by attempting to dismiss Maestri. The court declined to award the full amount of sanctions that respondents sought, namely, $15,035, concluding that the appropriate award was an attorney fee award of $7,700, reflecting 22 hours of attorney time at an hourly rate of $350.

1. *Sanctions Against Attorney Hired After Venue Selection*

Appellant contends that under subdivision (b) of section 396b, he cannot be subject to an award because he did not represent Megawine when Los Angeles County was selected as the venue for the action. In our view, that contention is mistaken. Generally, in construing a statute, we look first to its words, as ordinarily understood. (*Schatz v. Allen Matkins Leck Gamble & Mallory LLP* (2009) 45 Cal.4th 557, 571.) Although the statute expressly authorizes an award against *the attorney* representing the unsuccessful party on a venue motion, it expressly directs the trial court to examine the good faith and the "facts and law" available to "*the party* . . . selecting the venue" (§ 396b, subd. (b), italics added). Nothing in the statute limits awards to an attorney who represents the party when the selection is made.

That conclusion comports with the design of the statute, which is to promote litigation in the correct venue

by encouraging attorneys to attend to their ethical duties. (See *Metzger*, *supra*, 62 Cal.App.3d. at Supp. 38-Supp. 40.) As explained in *Metzger*, "[t]he statute . . . requires the attorney filing an action, or one opposing a motion for a change of venue, to carefully investigate the facts with a view of determining which court is proper for the trial of the action." (*Id.* at Supp. 39.) The attorney's ethical duties effectively afford him or her two alternatives: identify a good faith and reasonable basis for the client's choice of venue, or withdraw from the representation. (*Ibid.*)[10] Thus, "[i]f the lawyer yields to his client's demands, and files the action in what obviously is the wrong forum, when the court

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[10] *Metzger* explains: "If, following a thorough investigation, the attorney has an honest and reasonable belief that his client has a tenable contention, and he believes that he can establish the existence of such facts supporting his choice of venue to the satisfaction of the court, this part of his task is complete. [Citation.] [¶] If he determines that his client insists on attempting to present a contention which is not warranted under existing law, and cannot be supported by a good faith argument for a modification of existing law, the attorney may withdraw. [Citation.] If the client insists on bringing an action in the wrong forum, and the lawyer determines that this action is solely taken for the purpose of harassing or maliciously injuring the other party, the lawyer must withdraw. [Citation.]" (*Metzger*, *supra*, 62 Cal.App.3d. at Supp. 39.)

imposes attorney fees upon the lawyer, he will have no one to blame but himself." (*Ibid.*)

Although the focus in *Metzger* is on actions in which the pertinent attorney assisted in the original selection of venue, its rationale is applicable to an attorney hired after that selection who is called upon to defend the client's choice. Generally, "[w]hen substituted, the new attorney 'steps into the place of his predecessor and stands, with reference to the case and to the other party, precisely as did his predecessor.'" (1 Witkin, Cal. Procedure (5th ed. 2008) Attorneys, § 80, p. 115, quoting *Smith v. Whittier* (1892) 95 Cal. 279, 289.) Because the new attorney is subject to the same ethical duties, when faced with a challenge to the selected venue, he or she has the same options as the attorney representing the client when the choice was made. To conclude that the successor attorney is not subject to sanctions for failure to set forth a good faith and reasonable basis for the venue selection would frustrate the legislative intent underlying the statute, namely, to promote litigation in the correct venue.

2. *Adequacy of Findings To Support Award*

Appellant contends the trial court made insufficient findings to support the award, contending that the court's written order focused on the attempted dismissal of Maestri, which occurred after Los Angeles County had been selected as the venue for the action. He argues that the attempted dismissal is unrelated to the "key finding" required under

subdivison (b) of section 396b, which obliges the court to consider "whether the . . . selection of venue was made in good faith given the facts and law the party . . . selecting the venue knew or should have known." We disagree. Although subdivision (b) of section 396b contains no express requirement for findings, sanctions statutes are ordinarily construed to require findings stated with sufficient specificity to inform the person subject to sanctions and a reviewing court why the sanctions were imposed. (*Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1120-1121.) As explained below, under that standard, the trial court's findings were adequate.

The court's determinations regarding good faith and reasonableness pursuant to the statute are ordinarily based on "the facts adduced at the hearing on the motion and counsel's supporting legal argument," as the facts known to a party when it selected the venue are generally cloaked by the attorney-client privilege. (*Metzger*, *supra*, 62 Cal.App.3d. at Supp. 40.) The good faith and reasonableness of the party's choice of venue is thus necessarily inferred from the arguments offered by the party's attorney and other information before the court when it rules.

Here, the findings stated in the final written order must be interpreted in light of the initial tentative ruling, as the court expressly stated that it had changed its view regarding the propriety of sanctions. (*Mendly v. County of Los Angeles* (1994) 23 Cal.App.4th 1193, 1205 ["The same rules apply in ascertaining the meaning of a court order

. . . as in ascertaining the meaning of any other writing"].) The initial tentative ruling stated: "The [c]ourt declines to award attorney[] fees, finding that [Megawine's] 'selection of venue was made in good faith given the facts and law the party . . . selecting the venue knew or should have known." In contrast, the final order states that "the court now believes that sanctions are appropriate," sets forth the statutory standards for awarding sanctions, describes appellant's rejection of the offer to stipulate to a change of venue, and concludes that the attempted dismissal of Maestri without prejudice "appears to have been made in bad faith as an attempt to prevent the change of venue."

Interpreted in the context of the initial tentative ruling, the final order's findings are reasonably understood to establish that Megawine's venue selection was *not* made in good faith on the basis of the applicable legal principles. In our view, the court's determination that the attempted dismissal demonstrated that fact is amply supported by the record, as appellant never identified a reasonable basis for initiating the action in Los Angeles County.

Both before and after filing the venue motion, respondents sought a stipulation for a change of venue -- first from attorney Regwan and later from appellant -- contending, inter alia, that under *Brown*, *supra*, 37 Cal.3d 477, the misrepresentation claims against Maestri established Santa Clara County as the correct venue. Appellant did not agree to the stipulation, and approximately one month later, submitted Megawine's

opposition, which relied on a clearly defective contention regarding *Brown* that we have examined and rejected (see pt. C of the Discussion, *ante*). When the initial tentative ruling concluded that the misrepresentation claims were dispositive regarding venue, appellant tried to dismiss Maestri, and submitted a supplemental opposition that did not note the apparent defect in the dismissal. That conduct supports the credible inference that Megawine's venue selection reflected a decision to pursue trial in Los Angeles County, notwithstanding the rules rendering Maestri's residence dispositive regarding venue. Accordingly, in view of the culminating episode involving the dismissal, the trial court reasonably concluded that the venue choice was not made in good faith and on a reasonable basis. In sum, the trial court's findings are sufficient to support the award.[11]

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[11] In a related contention, appellant's briefs argue in footnotes that the trial court, in finding bad faith, incorrectly stated that Megawine's March 30, 2015 request to dismiss Maestri was filed on April 1, 2015, the date of the first hearing on the venue motion. As the contention is raised only in footnotes, it has been forfeited. (*Evans v. Centerstone Development Co.* (2005) 134 Cal.App.4th 151, 160) Moreover, we would reject the contention were we to examine it. To the extent the bad faith determination relied on a finding that appellant knew of the initial tentative rule before filing the dismissal request, there is substantial evidence to support that finding. As the initial tentative ruling does not refer to the request, the trial court clearly prepared the tentative ruling before learning of it. The

(Fn. continued on next page.)

3. *Amount of Award*

Appellant contends the trial court made insufficient findings regarding the amount of the award, arguing that the court, in directing him to pay respondents' attorney fees, was obliged to set forth why and how it determined the amount of fees. He maintains that the court was obliged to set forth findings establishing that no portion of the award reflected fees incurred while Regwan represented Megawine.

Appellant's contention fails, as he requested no such explanation, and the record otherwise discloses evidence sufficient to support the award. When no party requests a statement of decision in connection with a fee award, the trial court is not obliged to provide a detailed explanation for its ruling. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140; *Mann v. Quality Old Time Service, Inc.* (2006)

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record does not establish precisely when the initial tentative ruling became available to the parties, but discloses evidence that the trial court often published a tentative ruling several days before the pertinent hearing, and no later than the day before the hearing. Although appellant had long been apprised of the significance of Maestri's status as a defendant for the venue determination, he took no action to dismiss Maestri until the day before the hearing. The record reflects that the court clerk marked the dismissal request as "received" on March 30, 2015, and entered it in the case docket as filed on April 1, 2015. In our view, the record supports the reasonable inference that the initial tentative ruling prompted the dismissal request.

139 Cal.App.4th 328, 342, fn. 6.) In such cases, we will infer all findings necessary to support the award and "then examine the record to see if the findings are based on substantial evidence." (*Finney v. Gomez* (2003) 111 Cal.App.4th 527, 545.)

During the proceedings on the venue motion, respondents' counsel submitted declarations seeking sanctions totaling $15,035, encompassing $14,385 in attorney fees and $650 for attorney Bonnel-Rogers' travel expenses relating to the final hearing. According to the declarations, $5,635 in attorney fees were incurred in connection with the venue motion. The remaining fees were incurred by Bonnel-Rogers at an hourly rate of $350, reflecting 20 hours devoted to respondents' reply and supplemental reply, and 5 hours relating to her appearance at the final hearing. The trial court determined that the $15,035 request was excessive, and issued an award of $7,700 "based on 22 hours of work at $350 [an] hour."

We see no error in the award. In view of the record, the court appears to have limited the award to fees respondents incurred while appellant was engaged in opposing the venue motion, namely, the 20 hours that Bonnel-Rogers devoted to responding to Megawine's opposition and supplemental opposition, plus an additional 2 hours for her appearance at the final hearing.

Appellant suggests that the declarations submitted by respondents' attorneys could not support a fee award because they were unaccompanied by itemized billing

statements or invoices. However, attorney declarations specifying the work performed, the amount of time devoted to that work, and the relevant hourly rates may suffice for a fee award, notwithstanding the absence of time records or billing statements. (*Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1587.) As the declarations provided that information, they constitute substantial evidence sufficient to support the award. In sum, the trial court did not err in determining the amount of the award.[12]

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[12] Respondents have submitted a motion for sanctions, arguing that the appeal is frivolous and taken solely for the purpose of delay. Generally, sanctions for a frivolous appeal are granted only when the appeal was prosecuted for an improper motive or is indisputably meritless. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.) Upon review, we conclude this appeal does not meet the demanding standards under *Flaherty* for the imposition of sanctions, and deny the motion.

DISPOSITION

The award of sanctions is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.